IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1082 of 1995

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUPERINTENDENT OF LAND RECORDSCUM-CONSOLIDATION OFFICER

Versus

K H WAGHELA

Appearance:

1. Special Civil Application No. 1082 of 1995

Mr.Nagesh Sood AGP for Petitioner No. 1-2

MR IS SUPEHIA for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 21/10/2004

ORAL JUDGEMENT

1. This petition under Articles 226 and 227 of the Constitution of India is filed by the Superintendent of Land Records of State of Gujarat, challenging the order

dated 16th December 1993 passed by the Gujarat Civil Services Tribunal, Gandhinagar, in Appeal No.280 of 1992, whereby, the appeal filed by the respondent was allowed and the petitioner was directed to promote the respondent herein with effect from 23rd June 1987 and it was further ordered that the respondent herein should be granted deemed date from the date of passing the examination and that the respondent is entitled to all the consequential benefits, except arrears.

2. The learned Assistant Government Pleader has submitted that the order of the Tribunal is contrary to law and the Tribunal has failed to appreciate the factual aspects of the matter produced on record by the petitioner herein and the evidence appreciated by the Tribunal was not in its proper perspective. It was further contended that the Tribunal has erred in holding that the respondent be promoted to the post of Sirastedar with effect from 23rd June 1987 and he is entitled to deemed date from the date of passing of examination.

3. Learned advocate Mr. I.S. Supehia, appearing for the respondent, has submitted that the judgment and order of the Tribunal is just and proper since the respondent was promoted in his regular course to the said post with effect from 1st August 1989. Besides, the Tribunal has also not awarded any arrears and only deemed date is granted. The subject matter in the petition is in a narrow compass and the Court would not like to exercise power under Articles 226 and 227 of the Constitution of India in such matters.

4. Learned advocate Mr. I.S. Supehia, has given comparison of the respondent herein and one Shri Naik in paragraph 4 of the affidavit-in-reply in tabular form which clearly indicates that the date of joining of service by the respondent herein, the year of passing of SSC examination, the date of confirmation in service and also the date of promotion as Maintenance Surveyor are earlier than Shri Naik. So far as the date of passing L.R.Q. examination is concerned, Naik had passed earlier i.e. in the year 1979 while Vaghela, respondent herein, passed the said L.R.Q. examination within the prescribed chances and, in view of the provision of Rule 6 of the L.R.Q. Examination Rules, the respondent did not loose his seniority on account of passing the examination later particularly in view of the fact that the junior to the respondent, Naik, was not promoted by that time and, therefore, the directions given by the Tribunal are just and proper.

5. I have given considerable thought to the rival submissions made by the learned advocates for both the parties. From the record of the case, it transpires that the date of entering into service by Vaghela, the respondent herein, his year of passing the SSC examination, his date of confirmation, and his date of promotion as Maintenance surveyor are prior in point of time than Naik and, therefore, the respondent was senior to Naik. Not only that, within the prescribed chances, the respondent had passed the L.R.Q examination and, therefore, he was entitled to promotion for the post of Sirastedar in view of the fact that Naik, though passed the L.R.Q. examination earlier than the respondent herein, was not promoted by that time and, as submitted by Mr. Supehia rightly, the respondent was protected under Rule 6 of the L.R.Q. Examination Rules, since he did not loose any seniority on account of passing the said examination later than his junior, Naik. Further, the Tribunal has only given deemed date and no other benefits have been extended so as to cause any financial burden to the petitioner. In the facts and circumstances of the case, in my view, this is not a fit case to exercise the power under Articles 226 and 227 of the Constitution of India,

6. In the result, the petition has no merit and is hereby rejected. Rule is discharged with no order as to costs.

(Anant S. Dave, J.)

(swamy)